



Reprinted
February 25, 2009

HOUSE BILL No. 1633

DIGEST OF HB 1633 (Updated February 24, 2009 5:38 pm - DI 106)

Citations Affected: IC 24-5.5; IC 32-29; IC 32-30.

Synopsis: Foreclosure of residential mortgages. Provides that in the case of a residential mortgage transaction in which the debtor defaults after June 30, 2009, the creditor shall provide a presuit notice to the debtor that informs the debtor that the creditor intends to default and that the debtor may seek assistance from a mortgage foreclosure counselor. Specifies that if a creditor files an action to foreclose a mortgage in certain cases, the creditor must include with the complaint served on the debtor a notice that informs the debtor of the debtor's right to participate in a settlement conference. Requires the debtor to contact the court not later than 30 days after the date of the notice if the debtor wishes schedule a settlement conference. Prohibits a court from entering a judgment of foreclosure until: (1) 30 days after the creditor has provided notice of the availability of a settlement conference to the debtor if the debtor fails to contact the court within 30 days; (2) the conclusion of a settlement conference, if the parties are unable to reach an agreement; or (3) 60 days after the notice is sent if the property is vacant or certain other conditions apply. Provides that the debtor has the right to be represented by an attorney or a mortgage foreclosure counselor at the conference. Requires the creditor to ensure that any person representing the creditor at the conference or in any negotiations with the debtor has authority to bind the creditor. Upon the conclusion of a conference, requires the creditor to report to the housing and

(Continued next page)

Effective: July 1, 2009.

Bardon, Day, Pearson, Burton

January 16, 2009, read first time and referred to Committee on Financial Institutions.
February 19, 2009, reported — Do Pass.
February 24, 2009, read second time, amended, ordered engrossed.

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community development authority (authority) on whether the parties were able to agree on the terms of a foreclosure prevention agreement. Provides that after June 30, 2009, a creditor may not proceed to file a residential mortgage foreclosure action unless: (1) the creditor has given the required notice offering a conference to the debtor; (2) either the debtor did not respond to the creditor's notice not later than 30 days after the date of the notice, or the parties were unable to negotiate a mortgage prevention agreement after a conference is held; and (3) at least 90 days have elapsed since the date of the creditor's notice. Provides that in a residential mortgage foreclosure action filed after June 30, 2009, the court may not enter a judgment of foreclosure until 60 days after the date the complaint is filed, in a case in which the debtor did not respond to the creditor's notice not later than 30 days after the date of the notice. Provides that, upon petition by the creditor, the court may waive the 60 day period under certain circumstances. Provides that in the case of a residential mortgage foreclosure action that: (1) is pending on July 1, 2009; or (2) is filed after June 30, 2009; the court having jurisdiction of the action shall serve notice of a settlement conference on the parties to the action. Provides that the notice must set forth a date and time by which the parties must conduct a settlement conference. Provides that the date specified in the notice may not be earlier than 25 days after the date of the notice or later than 60 days after the date of the notice. Provides that the notice must require: (1) the debtor to contact a mortgage foreclosure counselor before the settlement conference and bring to the settlement conference certain documents; and (2) the creditor to bring to the settlement conference a complete transaction history for the mortgage upon which the foreclosure action is based. Provides that each party has the right to be represented by an attorney or a mortgage foreclosure counselor at the settlement conference. Provides that the settlement conference must be held at the county courthouse at the date and time specified in the court's notice unless the parties agree to hold the settlement conference: (1) by telephone; or (2) in person at a location agreed to by the parties; at a time and date agreed to by the parties, but not later than the time and date specified in the notice. Provides that any party may file: (1) objections to the settlement conference; or (2) a petition for the court to review a proposed foreclosure prevention agreement offered by the creditor to the debtor in connection with the conference held before the filing of the complaint; not later than 15 days after the date of the court's notice. Provides that after reviewing a proposed agreement offered by the creditor in connection with the previous conference, the court may order the parties to appear before the court for a hearing, instead of holding a settlement conference. Provides that the creditor shall ensure that any person representing the creditor at the settlement conference has the authority to bind the creditor. Provides that if the parties agree to enter into a foreclosure prevention agreement as a result of the settlement conference, the creditor must report that fact to: (1) the court; and (2) the authority; not later than seven business days after the signing of the agreement. Provides that if, after conducting a settlement conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement: (1) the creditor must report that fact to the court and the authority not later than seven business days after the date of the settlement conference; and (2) the foreclosure action filed by the creditor may proceed as allowed by law.

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February 25, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1633

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-5.5-1-1, AS ADDED BY P.L.209-2007,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 1. **Except for IC 24-5.5-3-1**, this article does not
4 apply to the following:
- 5 (1) A person organized or chartered under the laws of this state,
6 any other state, or the United States that relate to a bank, a trust
7 company, a savings association, a savings bank, a credit union, or
8 an industrial loan and investment company.
- 9 (2) The Federal National Mortgage Association, the Federal
10 Home Loan Mortgage Corporation, or a Federal Home Loan
11 Bank.
- 12 (3) A department or agency of the United States or of Indiana.
- 13 (4) A person that is servicing or enforcing a loan that it owns.
- 14 (5) A person that is servicing a loan:
- 15 (A) for a person described in subdivisions (1) through (4); or

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~~this section~~, or

(B) insured by the Department of Housing and Urban Development or guaranteed by the Veterans Administration.

(6) An attorney licensed to practice law in Indiana who is representing a mortgagor.

SECTION 2. IC 24-5.5-3-1, AS ADDED BY P.L.209-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Subject to IC 32-30-10.5 with respect to first lien mortgage transactions and** in addition to any other notice required by law, a mortgagee, or the mortgagee's assignee, that proceeds under IC 32-30-10 to foreclose a mortgage or deed of trust shall, at the time of filing the complaint in the action, provide the following written notice to the mortgagor in a statement printed in at least 14 point boldface type:

"NOTICE REQUIRED BY STATE LAW

Mortgage foreclosure is a complex process. People may approach you about "saving" your home. You should be careful about any such promises. There are government agencies and nonprofit organizations you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the Indiana housing and community development authority."

Service of the written notice required by this chapter shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person.

SECTION 3. IC 32-29-7-3, AS AMENDED BY P.L.100-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **Except as provided in IC 32-30-10.5 for first lien mortgage transactions**, in a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

(1) the period is:

(A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; and

(B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and

(2) if the court finds that the mortgaged real estate is residential real estate and has been abandoned, a judgment or decree of sale may be executed on the date the judgment of foreclosure or

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decree of sale is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk in any county as provided in IC 33-32-3-2. **Except as provided in IC 32-30-10.5 for first lien mortgage transactions**, after the period set forth in subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in any county where the judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 of this chapter, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation. The sheriff shall publish the advertisement in at least one (1) newspaper published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars (\$10) to one (1) owner and three dollars (\$3) to each additional owner for service of written notice under this subsection. The fee is:

- (1) a cost of the proceeding;
- (2) to be collected as other costs of the proceeding are collected; and
- (3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. The

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sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

(h) The sheriff may charge an administrative fee of not more than two hundred dollars (\$200) with respect to a proceeding referred to in subsection (b) for actual costs directly attributable to the administration of the sale under subsection (c). The fee is:

(1) payable by the person seeking to enforce the judgment and decree; and

(2) due at the time of filing of the praecipe;
under subsection (b).

SECTION 4. IC 32-30-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **Except as provided in IC 32-30-10.5 for first lien mortgage transactions**, if a mortgagor defaults in the performance of any condition contained in a mortgage, the mortgagee or the mortgagee's assigns may proceed in the circuit court of the county where the real estate is located to foreclose the equity of redemption contained in the mortgage.

(b) If the real estate is located in more than one (1) county, the circuit court of any county in which the real estate is located has jurisdiction for an action for the foreclosure of the equity of redemption contained in the mortgage.

SECTION 5. IC 32-30-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **Subject to IC 32-30-10.5 with respect to first lien mortgage transactions**, in rendering judgment of foreclosure, the courts shall:

(1) give personal judgment against any party to the suit liable upon any agreement for the payment of any sum of money secured by the mortgage; and

(2) order the mortgaged premises, or as much of the mortgaged premises as may be necessary to satisfy the mortgage and court costs, to be sold first before the sale of other property of the defendant.

The judgment is satisfied by the payment of the mortgage debt, with interest and costs, at any time before sale.

SECTION 6. IC 32-30-10-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. A plaintiff may not:

(1) proceed to foreclose the mortgagee's mortgage:

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(A) while the plaintiff is prosecuting any other action for the same debt or matter that is secured by the mortgage; or

(B) while the plaintiff is seeking to obtain execution of any judgment in any other action; or

(C) unless one (1) of the conditions set forth in IC 32-30-10.5-10(a) applies, in the case of a first lien mortgage transaction; or

(2) prosecute any other action for the same matter while the plaintiff is foreclosing the mortgagee's mortgage or prosecuting a judgment of foreclosure.

SECTION 7. IC 32-30-10.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 10.5. Foreclosure Prevention Agreements for Residential Mortgages

Sec. 1. (a) The general assembly makes the following findings:

(1) Indiana faces a serious threat to its state economy and to the economies of its political subdivisions because of Indiana's high rate of residential mortgage foreclosures, which constitutes an emergency.

(2) Indiana's high rate of residential mortgage foreclosures has adversely affected property values in Indiana, and may have an even greater adverse effect on property values if the foreclosure rate continues to rise.

(3) It is in the public interest for the state to modify the foreclosure process to require creditors and debtors to engage in good faith negotiations designed to avoid foreclosure by allowing debtors to repay their mortgages. Placing conditions on a creditor's ability to access the state's foreclosure process is essential to ensure that the process does not result in more foreclosed properties entering the Indiana housing market when a foreclosure could have been avoided.

(b) The purpose of this chapter is to avoid unnecessary foreclosures of residential properties and thereby provide stability to Indiana's statewide and local economies by:

(1) requiring early contact and communications between creditors, their authorized agents, and debtors in order to engage in negotiations that could avoid foreclosure; and

(2) facilitating the modification of residential mortgages in appropriate circumstances.

Sec. 2. As used in this chapter, "creditor" refers to:

(1) the creditor (as defined in IC 24-4.4-1-301(2)); or

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(2) a mortgage servicer;
in a first lien mortgage transaction (as defined in
IC 24-4.4-1-301(6)).

Sec. 3. As used in this chapter, "debtor" refers to a person
obligated to repay a mortgage, including a coborrower, cosigner,
or guarantor.

Sec. 4. As used in this chapter, "foreclosure prevention
agreement" means a written agreement that:

- (1) is executed by both the creditor and the debtor; and
- (2) offers the debtor an individualized plan that may include:
 - (A) a temporary forbearance with respect to the mortgage;
 - (B) a reduction of any arrearage owed by the debtor;
 - (C) a reduction of the interest rate that applies to the
mortgage;
 - (D) a repayment plan;
 - (E) a deed in lieu of foreclosure;
 - (F) reinstatement of the mortgage upon the debtor's
payment of any arrearage;
 - (G) a sale of the property; or
 - (H) any loss mitigation arrangement or debtor relief plan
established by federal law.

Sec. 5. As used in this chapter, "mortgage" refers to a first lien
mortgage transaction (as defined in IC 24-4.4-1-301(6)).

Sec. 6. As used in this chapter, "mortgage foreclosure
counselor" means a foreclosure prevention counselor who is part
of, or has been trained or certified by, the Indiana Foreclosure
Prevention Network.

Sec. 7. As used in this chapter, "mortgage servicer" means the
last person to whom:

- (1) a debtor in a mortgage; or
- (2) the debtor's successor in interest;

has been instructed to send payments on the mortgage.

Sec. 8. As used in this chapter, "reporting agency" means the
Indiana housing and community development authority created by
IC 5-20-1-3.

Sec. 9. (a) After June 30, 2009, except as provided in subsection
(d) and section 10(f) of this chapter, before a creditor files an
action for foreclosure, the creditor shall send to the debtor by
certified mail, return receipt requested, a presuit notice in a form
prescribed by the Indiana housing and community development
authority established by IC 5-20-1-3 that informs the debtor that
the creditor intends to initiate a foreclosure and that the debtor

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1 may obtain assistance from a mortgage foreclosure counselor and
 2 that provides information on how to contact a mortgage
 3 foreclosure counselor. The notice must provide the contact
 4 information for the Indiana Foreclosure Prevention Network and
 5 for any other mortgage foreclosure counselor serving the area in
 6 which the property that is the subject of the mortgage is located, to
 7 the extent determinable by the creditor upon a good faith effort to
 8 identify such counselors serving the area.

9 (b) The notice required by subsection (a) shall be sent to:

10 (1) the address of the mortgaged property; or

11 (2) the last known mailing address of the debtor if the
 12 creditor's records indicate that the mailing address of the
 13 debtor is other than the address of the mortgaged property.

14 (c) Except as provided in subsection (d) and section 10(f) of this
 15 chapter, if a creditor files an action to foreclose a mortgage, the
 16 creditor shall include with the complaint served on the debtor in
 17 accordance with court rules a notice that informs the debtor of the
 18 debtor's right to participate in a settlement conference. The notice
 19 shall be served with the complaint and be in a form prescribed by
 20 the Indiana housing and community development authority
 21 established by IC 5-20-1-3. The notice must inform the debtor that
 22 the debtor may schedule a settlement conference by notifying the
 23 court of the debtor's intent to participate in a settlement
 24 conference not later than thirty (30) days after the notice is served.

25 (d) A creditor is not required to send the notices described in
 26 this section if:

27 (1) the loan is secured by a dwelling that is not the debtor's
 28 primary residence;

29 (2) the loan has been the subject of a prior foreclosure
 30 prevention plan;

31 (3) bankruptcy law prohibits the creditor from participating
 32 in a settlement conference under this chapter with respect to
 33 the loan; or

34 (4) the court finds that a settlement conference would be of
 35 limited value based on the result of a prior loss mitigation
 36 effort between the debtor and the creditor.

37 Sec. 10. (a) After June 30, 2009, a court may not issue a
 38 judgment of foreclosure under IC 32-30-10 on a mortgage subject
 39 to this chapter unless all of the following apply:

40 (1) The creditor has given the notice required under section
 41 9(c) of this chapter.

42 (2) The debtor either:

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(A) does not contact the court within the thirty (30) day period described in section 9(c) of this chapter to schedule a settlement conference under section 9(c) of this chapter; or

(B) contacts the court within the thirty (30) day period described in section 9(c) of this chapter to schedule a conference under section 9(c) of this chapter and, upon conclusion of the conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement.

(b) In a foreclosure action filed under subsection (a), the creditor shall attach to the complaint filed with the court a copy of the notice sent to the debtor under section 9(a) of this chapter.

(c) Except as provided in subsection (d), in a foreclosure action filed under subsection (a) after June 30, 2009, the court may not render a judgment of foreclosure until sixty (60) days after the date the notice required by section 9(a) of this chapter was sent unless the mortgaged property is vacant.

(1) sixty (60) days after the date the complaint is filed, in the case of a complaint filed under subsection (a)(2)(A); or

(2) the action may proceed under section 11(j) of this chapter, in the case of a complaint filed under subsection (a)(2)(B).

(d) Upon petition by the creditor, the court may waive the sixty (60) day period described in subsection (c)(1) under any of the following circumstances:

(1) All of the following occur:

(A) The debtor does not respond to the creditor's notice under section 9(a) of this chapter not later than thirty (30) days after the date of the notice.

(B) The creditor demonstrates to the court that the creditor has made a reasonable effort to verify the mailing address of the debtor, if the creditor's records indicate that the mailing address of the debtor is other than the address of the mortgaged property.

(C) The court is satisfied that service was perfected.

However, the court may deny a creditor's petition under this subsection and order the creditor to provide the notice required under section 9(a) of this chapter using another method of service.

(2) The court determines that the property that is the subject of the mortgage has been abandoned.

(3) The debtor has defaulted on a previous foreclosure

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1 prevention agreement or other workout agreement with the
 2 creditor and, after reviewing the terms of such agreement, the
 3 court determines that a waiver of the sixty (60) day period
 4 described in subsection (c)(1) is appropriate and in the
 5 interest of justice.

6 **Sec. 11. (a)** This section applies to a mortgage foreclosure action
 7 with respect to which the creditor has filed the complaint in the
 8 proceeding before July 1, 2009, and the court having jurisdiction
 9 over the proceeding has not rendered a judgment of foreclosure
 10 before July 1, 2009.

11 (b) In a mortgage foreclosure action to which this section
 12 applies, the court having jurisdiction over the action shall serve
 13 notice of the availability of a settlement conference under section
 14 9(c) of this chapter.

15 (c) A notice of a settlement conference issued under subsection
 16 (b) by a court having jurisdiction in a mortgage foreclosure action
 17 must do the following:

18 (1) Order the creditor and the debtor to conduct a settlement
 19 conference on or before a date and time specified in the
 20 notice, which date must not be earlier than twenty-five (25)
 21 days after the date of the notice or later than sixty (60) days
 22 after the date of the notice, for the purpose of attempting to
 23 negotiate a foreclosure prevention agreement.

24 (2) Require the debtor to contact a mortgage foreclosure
 25 counselor before the date of the settlement conference. The
 26 notice must provide the contact information for the Indiana
 27 Foreclosure Prevention Network and for any other mortgage
 28 foreclosure counselor serving the area in which the property
 29 that is the subject of the mortgage is located.

30 (3) Require the debtor to bring to the settlement conference
 31 the following documents needed to engage in good faith
 32 negotiations with the creditor:

33 (A) Documentation of the debtor's present and future
 34 income, expenses, assets, and liabilities, including
 35 documentation of the debtor's employment history.

36 (B) Any other documentation or information that the court
 37 determines is needed for the debtor to engage in good faith
 38 negotiations with the creditor. The court shall identify any
 39 documents required under this clause with enough
 40 specificity to allow the debtor to obtain the documents
 41 before the scheduled settlement conference.

42 (4) Require the creditor to bring to the settlement conference

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1 a complete transaction history for the mortgage upon which
 2 the mortgage foreclosure action is based. The transaction
 3 history required by this subdivision must include a record of
 4 the following:

5 (A) All payments on the mortgage made by or on behalf of
 6 the borrower during the life of the mortgage, including the
 7 amount of each payment and the date the payment was
 8 received by the creditor.

9 (B) All fees, penalties, or other charges imposed by the
 10 creditor during the life of the mortgage, including:

11 (i) the amount of the fee, penalty, or other charge;

12 (ii) the reason for its imposition; and

13 (iii) the amount, if any, of the fee, penalty, or other
 14 charge that was paid by the borrower and the date on
 15 which the payment was received by the creditor.

16 (5) Inform the parties that:

17 (A) each party has the right to be represented by an
 18 attorney or a mortgage foreclosure counselor at the
 19 settlement conference; and

20 (B) an attorney or a mortgage foreclosure counselor may
 21 participate in the settlement conference in person or by
 22 telephone.

23 (6) Inform the parties that the settlement conference will be
 24 conducted at the county courthouse on the date and time
 25 specified in the notice under subdivision (1) unless the parties
 26 submit to the court not later than twenty (20) days after the
 27 date of the court's notice a statement that:

28 (A) is signed by all parties identified in the court's notice;
 29 and

30 (B) indicates that the parties have agreed to hold the
 31 settlement conference:

32 (i) by telephone at a date and time agreed to by the
 33 parties, which date and time must not be later than the
 34 date and time specified in the notice under subdivision
 35 (1); or

36 (ii) in person at a location agreed to by the parties and at
 37 a date and time agreed to by the parties, which date and
 38 time must not be later than the date and time specified in
 39 the notice under subdivision (1).

40 (7) Inform the parties that any party to the foreclosure action
 41 may file written objections to the settlement conference or a
 42 petition for review described in subsection (d) not later than

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1 fifteen (15) days after the date of the notice by filing such
2 objections or petition with the court and serving all other
3 persons listed in the notice with a copy of the objections or
4 petition.

5 (d) In the case of a foreclosure action described in subsection
6 (a)(2), the court may, upon the petition of any party, or an attorney
7 or a mortgage foreclosure consultant representing the debtor,
8 review a proposed foreclosure prevention agreement that the
9 creditor offered to the debtor in connection with the conference
10 held under section 9 of this chapter, along with any other
11 documents in connection with that conference that the court may
12 require, including a statement of the borrower's reasons for
13 rejecting the proposed agreement. After reviewing a petition and
14 any accompanying documents submitted under this subsection, the
15 court may order the parties to appear before the court for a
16 hearing on the matter, instead of holding a settlement conference
17 under this section.

18 (e) The court may require any person that is a party to the
19 foreclosure action to appear at or participate in a settlement
20 conference held under this section.

21 (f) At the court's discretion, a settlement conference held at a
22 county courthouse under subsection (c)(6) may or may not be
23 attended by a judicial officer.

24 (g) The creditor shall ensure that any person representing the
25 creditor:

26 (1) at a settlement conference scheduled under subsection (c);
27 or

28 (2) in any negotiations with the debtor designed to reach
29 agreement on the terms of a foreclosure prevention
30 agreement;

31 has authority to bind the creditor in negotiating a foreclosure
32 prevention agreement with the debtor.

33 (h) If the parties elect under subsection (c)(6) to conduct a
34 settlement conference by telephone, the parties shall ensure the
35 availability of any technology needed to allow:

36 (1) a mortgage foreclosure counselor; or

37 (2) an attorney;

38 representing any party in the proceeding to participate in the call
39 simultaneously with the parties.

40 (i) If, as a result of a settlement conference held under this
41 section, the debtor and the creditor agree to enter into a
42 foreclosure prevention agreement, the agreement shall be reduced

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1 to writing and signed by both parties, and each party shall retain
 2 a copy of the signed agreement. Not later than seven (7) business
 3 days after the signing of the foreclosure prevention agreement, the
 4 creditor shall file with the court and the reporting agency, on a
 5 form prescribed by the reporting agency, a notice indicating that
 6 a foreclosure prevention agreement has been reached.

7 (j) If, as a result of a settlement conference held under this
 8 section, the debtor and the creditor are unable to agree on the
 9 terms of a foreclosure prevention agreement:

10 (1) the creditor shall, not later than seven (7) business days
 11 after the date of the settlement conference, file with the court
 12 and the reporting agency, on a form prescribed by the
 13 reporting agency, a notice indicating:

14 (A) the terms of any foreclosure prevention agreement
 15 offered by the creditor before or at the settlement
 16 conference; and

17 (B) the debtor's stated reasons for rejecting the agreement,
 18 to the extent known; and

19 (2) the foreclosure action filed by the creditor and described
 20 in subsection (a) may proceed as otherwise allowed by law.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1633, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BARDON, Chair

Committee Vote: yeas 6, nays 4.

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1633 be amended to read as follows:

Page 5, line 22, delete "will" and insert "**may**".

Page 5, delete lines 25 through 39.

Page 5, line 40, delete "(7)" and insert "**(3)**".

Page 5, line 40, delete "necessary and".

Page 6, delete lines 6 through 14.

Page 6, delete lines 34 through 42, begin a new line block indented, and insert:

"(2) offers the debtor an individualized plan that may include:

(A) a temporary forbearance with respect to the mortgage;

(B) a reduction of any arrearage owed by the debtor;

(C) a reduction of the interest rate that applies to the mortgage;

(D) a repayment plan;

(E) a deed in lieu of foreclosure;

(F) reinstatement of the mortgage upon the debtor's payment of any arrearage;

(G) a sale of the property; or

(H) any loss mitigation arrangement or debtor relief plan established by federal law."

Page 7, delete lines 1 through 8.

Page 7, delete lines 23 through 36, begin a new paragraph and insert:

"Sec. 9. (a) After June 30, 2009, except as provided in subsection (d) and section 10(f) of this chapter, before a creditor files an action for foreclosure, the creditor shall send to the debtor by certified mail, return receipt requested, a presuit notice in a form prescribed by the Indiana housing and community development



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authority established by IC 5-20-1-3 that informs the debtor that the creditor intends to initiate a foreclosure and that the debtor may obtain assistance from a mortgage foreclosure counselor and that provides information on how to contact a mortgage foreclosure counselor."

Delete page 8, begin a new paragraph, and insert:

"(b) The notice required by subsection (a) shall be sent to:

- (1) the address of the mortgaged property; or
- (2) the last known mailing address of the debtor if the creditor's records indicate that the mailing address of the debtor is other than the address of the mortgaged property.

(c) Except as provided in subsection (d) and section 10(f) of this chapter, if a creditor files an action to foreclose a mortgage, the creditor shall include with the complaint served on the debtor in accordance with court rules a notice that informs the debtor of the debtor's right to participate in a settlement conference. The notice shall be served with the complaint and be in a form prescribed by the Indiana housing and community development authority established by IC 5-20-1-3. The notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court of the debtor's intent to participate in a settlement conference not later than thirty (30) days after the notice is served.

(d) A creditor is not required to send the notices described in this section if:

- (1) the loan is secured by a dwelling that is not the debtor's primary residence;
- (2) the loan has been the subject of a prior foreclosure prevention plan;
- (3) bankruptcy law prohibits the creditor from participating in a settlement conference under this chapter with respect to the loan; or
- (4) the court finds that a settlement conference would be of limited value based on the result of a prior loss mitigation effort between the debtor and the creditor."

Page 9, delete lines 1 through 39.

Page 9, line 40, delete "creditor may not proceed" and insert "court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter unless all of the following apply:

- (1) The creditor has given the notice required under section 9(c) of this chapter.
- (2) The debtor either:
 - (A) does not contact the court within the thirty (30) day

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period described in section 9(c) of this chapter to schedule a settlement conference under section 9(c) of this chapter; or

(B) contacts the court within the thirty (30) day period described in section 9(c) of this chapter to schedule a conference under section 9(c) of this chapter and, upon conclusion of the conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement."

Page 9, delete lines 41 through 42.

Page 10, delete lines 1 through 16.

Page 10, line 22, delete "until:" and insert "**until sixty (60) days after the date the notice required by section 9(a) of this chapter was sent unless the mortgaged property is vacant.**".

Page 11, delete lines 10 through 42, begin a new paragraph, and insert:

"Sec. 11. (a) This section applies to a mortgage foreclosure action with respect to which the creditor has filed the complaint in the proceeding before July 1, 2009, and the court having jurisdiction over the proceeding has not rendered a judgment of foreclosure before July 1, 2009.

(b) In a mortgage foreclosure action to which this section applies, the court having jurisdiction over the action shall serve notice of the availability of a settlement conference under section 9(c) of this chapter."

Page 12, delete lines 1 through 3.

Renumber all SECTIONS consecutively.

(Reference is to HB 1633 as printed February 20, 2009.)

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